

HOUSE OF REPRESENTATIVES

HAWAII STATE LEGISLATURE

HONOLULU, HAWAII

JULY 17, 2009

INVITATION FOR BIDS (IFB)

No. 01-09

SEALED BIDS

FOR

PRINTING, SEWING AND BINDING

THE JOURNAL OF

THE HOUSE OF REPRESENTATIVES

TWENTY-FIFTH LEGISLATURE, REGULAR SESSION OF 2009 AND

ANY SPECIAL SESSION CONVENED DURING 2009

STATE OF HAWAII

will be received up to and opened at 2:00 p.m.

on

AUGUST 7, 2009

in the Office of the Clerk of the House of Representatives, State Capitol, Room 027, Honolulu, Hawaii 96813.

HOUSE OF REPRESENTATIVES
STATE OF HAWAII

NOTICE TO OFFERORS

SEALED OFFERS for printing, sewing and binding the Journal of the House of Representatives of the Twenty-Fifth Legislature, Regular Session of 2009 and any Special Session convened during 2009, State of Hawaii (IFB No. 01-09) will be received by the Office of the Clerk of the House of Representatives, Hawaii State Legislature, State Capitol, Room 027, Honolulu, Hawaii 96813. Offers will be received until 2:00 p.m., August 7, 2009.

Offers received after the time and date fixed for opening bids will not be considered.

Contract documents, including specifications, may either be obtained from or examined at the above-referenced office.

The House of Representatives reserves the right to reject any or all offers, and to waive any defects in an offer for the best interest of the public.

DATED: Honolulu, Hawaii, July 17, 2009

Patricia Mau-Shimizu
Clerk of the House of Representatives

PURPOSE AND TIMETABLE

1 PURPOSE

The purpose of this Invitation for Bids (IFB) is to select a vendor for printing, sewing and binding the Journal of the House of Representatives of the Hawaii State Legislature in the manner more particularly described in the Specifications section of this IFB.

The requirements of the State Procurement Code (Chapters 103 and 103D, Hawaii Revised Statutes (HRS) and corresponding Hawaii Administrative Rules (HAR) will be adhered to in the selection of a vendor for printing, sewing and binding the Journal that meets the requirements of the House of Representatives.

The vendor shall deliver the required number of copies of the Journal complete to the Clerk of the House of Representatives no later than November 16, 2009.

The information contained in this IFB should enable interested parties to prepare and submit offers meeting the needs of the House of Representatives.

2 TIMETABLE

Time is of the essence of this IFB and the contract to be awarded pursuant thereto. This timetable sets forth the deadlines for the selection of the vendor for printing, sewing, and binding the House Journal pursuant to this IFB and for the delivery of the completed Journal by the successful bidder.

The schedule is as follows:

<u>Activity</u>	<u>Scheduled Date</u>	
IFB advertised	July 17, 2009	
IFB released	July 17, 2009	
Bids due	August 7, 2009	[2:00 p.m. HST]
Bids opened	August 7, 2009	[2:01 p.m. HST]
Issuance of Notice of Intent to Award	August 12, 2009	
Transmittal of materials to printer	September 15, 2009	
Delivery of Journal	November 16, 2009	

3 AMENDMENTS

The House of Representatives reserves the right to amend this IFB at any time prior to the due date for the bids.

4 ATTACHMENTS

In addition to this statement of Purpose and Timetable, the IFB includes the following attachments, attached hereto and made a part hereof:

- (1) Specifications
- (2) Special Conditions
- (3) General Terms and Conditions

SPECIFICATIONS

Specifications for offerors desiring to submit bids for printing, sewing and binding the Journal of the House of Representatives ("House Journal") of the Twenty-Fifth Legislature, Regular Session of 2009 and any Special Session convened during 2009, based on "offset" printing.

1 NUMBER

The number of copies of the House Journal shall be 111.

2 MAKE-UP

The work shall be first class in every respect. The paper shall be forty pound white machine finished book. Each page shall be 11 inches high and 8 inches wide. Space on the page to be occupied by type shall be 10 inches by 7 inches. Running heads at the top of the pages indicate the session and the day of session. All pages are camera-ready except for photo page. Offeror will compose the photo page from extracting photographs from 3.5" x 5" prints. The photos will be provided by the House of Representatives.

3 PRINTING

The final printed sheets shall conform to the pages as submitted and approved by the Clerk of the House of Representatives as the officer-in-charge, and any and all sheets that do not so conform to the camera-ready pages shall be printed at the expense of the contractor.

4 BINDING

Binding and Sewing shall be of buckram with the words "House Journal Regular Session of 2009" in black lettering on the backbone of the House Journal and the words "Journal of the House of Representatives of the Twenty-Fifth Legislature of the State of Hawaii, Regular Session of 2009" in similar type and ink on the front outside cover of the book and shall be similar to the binding of the House Journal of the House of Representatives of the Regular Session 2007. In addition, if any special session is convened during 2009, said backbone shall be revised as appropriate. Fifty-five (55) of the 111 copies shall be appropriately gold stamped with the district numbers of the members of the House of Representatives and for the Chief Clerk, Assistant Clerk, Sergeant-at-Arms, and Assistant Sergeant-at-Arms. (Example: Fifty-first District, Second District, Chief Clerk, Assistant Clerk, Sergeant-at-Arms, Assistant Sergeant-at-Arms)

5 BASIS OF OFFERS

Offers shall be based on the price per printed page which price shall include all taxes, fees and other costs.

SPECIAL CONDITIONS

1 OFFICER-IN-CHARGE

For the purpose of this contract, Ms. Patricia Mau-Shimizu, Clerk of the House of Representatives is designated officer-in-charge. Ms. Mau-Shimizu can be contacted at the following numbers: telephone (808) 586-6400; fax (808) 586-6401.

2 OFFEROR QUALIFICATION

Offeror shall designate at least one (1) employee liaison for this contract. This individual shall be capable of answering questions, resolving problems, and providing follow-up assistance.

3 OFFER SECURITY

Offers must be accompanied by a certified check in a sum equal to five (5) percent of the amount of the bid per printed page multiplied by 2500 and payable to the Hawaii State House of Representatives, which check shall be cashed and paid into the Treasury of the State in case successful bidder fails or neglects to enter into a contract for the work or furnish satisfactory bond in the sum herein specified within seven (7) days after written notification of the award of the contract to the contractor.

4 DELIVERIES

The Clerk of the House of Representatives shall deliver to the contractor all materials for the printing of the Journal of the House of Representatives no later than September 15, 2009. The contractor shall deliver the required number of copies of the completed Journal to the Clerk of the House of Representatives no later than November 16, 2009.

5 QUALITY

All products furnished under this IFB shall be free from defects which may render the Journal product unfit to use. The contractor shall immediately replace damaged or rejected Journal product with Journals of the quality required by these specifications.

Failure to replace or to remove any rejected Journal shall not relieve the contractor from the responsibility imposed upon the contractor by the contract.

The House of Representatives may, at any time and by written order, stop the delivery of Journals not conforming to the Specifications. Such stop order shall not relieve the contractor of the obligation to complete the work within the contract time limits, nor shall it in any way terminate, cancel, or abrogate the contract or any part thereof.

6 INVOICING

Upon delivery of the goods, the contractor shall forward an invoice to the officer-in-charge together with a certified statement that work under the contract has been performed in accordance with the contract. Each invoice shall reference the contract number, identify the products invoiced and delivered, and state the payment amount due.

7 PAYMENT

Pursuant to Section 103-10, HRS, the House of Representatives shall have thirty (30) calendar days after receipt of invoice or satisfactory delivery of goods or performance of the services, to make payment. The House of Representatives will reject any offer submitted with a condition requiring payment within a shorter period. Further, the House of Representatives will reject any offer submitted with a condition requiring interest payments greater than allowed by Section 103-10, HRS, as amended.

8 ACCEPTANCE AND PAYMENT

The House of Representatives shall pay the contractor the sum of \$5,000.00 as a partial payment under the contract upon commencement of work under the contract by the contractor.

An invoice(s) shall be processed for payment of the remaining balance under the contract as the goods or services are received and accepted as meeting the required quality standards. Each invoice shall be prepared in triplicate (an original and two copies), and forwarded directly to the officer-in-charge. If a duplicated copy is submitted as the original, such invoice must bear a signed certification (original signature) that the invoice is being submitted as the original.

9 TITLE TO GOODS

All products delivered shall be free of all liens, claims, and encumbrances.

10 OFFER FORMS

Offeror shall submit an offer in the form attached to these Special Conditions as Exhibit I. Offeror shall complete all information requested on the Offer Form.

11 AUTHORIZATION TO SUBMIT OFFERS AND ENTER INTO CONTRACTS

Persons submitting an offer or signing a contract and bond on behalf of a corporation, partnership, or limited liability company must be authorized to perform such acts.

- a. In the case of a sole proprietorship, the signature of the sole owner shall suffice.

- b. In the case of a partnership, an agreement signed by all partners shall suffice. All such agreements must be certified by the principal partner within twelve months of the offer opening date.
- c. In the case of a corporation, such authorization is normally made by a corporate resolution. Evidence of such a resolution must be forwarded with the offer by way of a certification signed by the corporate secretary. The certificate must be dated within twelve months of the offer opening date.
- d. In the case of a limited liability company (LLC), an agreement signed by all members of a member-managed LLC, or by all managers of a manager-managed LLC. All such agreements must be certified by the manager of the LLC within twelve months of the offer opening date.

12 PERFORMANCE GUARANTY

The contractor shall submit together with the executed contract, a performance guaranty in the amount of fifty (50) percent of the contractor's bid for the proper completion of the work per printed page multiplied by 2500.

13 LIQUIDATED DAMAGES

For each day's delay in the delivery of the completed Journal beyond the due delivery date, one (1) percent of the total contract price shall, at the option of the chief procurement officer of the House of Representatives and the officer-in-charge, be deducted as liquidated damages and not as a penalty or forfeiture, without prejudice to the right of the House of Representatives to seek other equitable or legal relief.

14 WAGE CERTIFICATE

The Contractor shall submit together with the executed contract, a wage certificate pursuant to Section 103-55, Hawaii Revised Statutes.

Exhibit 1 to Special Conditions

OFFER FORM

The Honorable Speaker of the House
State of Hawaii
State Capitol
415 S. Beretania Street
Honolulu, Hawaii 96813

Dear Sir:

The undersigned, as offeror or its authorized representative, has carefully examined the Invitation for Bids (IFB) No. 01-09 for printing, sewing and binding the Journal of the House of Representatives, Twenty-Fifth Legislature, Regular Session of 2009, and any Special Session Convened during 2009, State of Hawaii; has carefully read and understands the terms and conditions specified in IFB No. 01-09, including the General Terms and Conditions, Special Conditions, and Specifications; and further understands that the provisions of the Hawaii Procurement Code, Chapters 103 and 103D, Hawaii Revised Statutes (HRS), and the Hawaii Administrative Rules (HAR) on Procurement issued by the Procurement Policy Board shall apply to the terms and conditions of the IFB.

The offeror, having the above understanding, hereby submits the following bid, all in accordance with the true intent and meaning thereof.

In executing and submitting this bid, the undersigned certifies the following:

- (1) This bid is not in violation of Chapter 84, HRS, concerning prohibited state contracts; and
- (2) The total price per printed page submitted below, which includes all taxes, fees and other costs, was independently arrived at without collusion.

TOTAL PRICE PER PRINTED PAGE: \$_____

The following attachments are hereby made a part of this bid:

- (1) Offer
- (2) Standards of Conduct Declaration
- (3) Preference Certificate (if applicable)
- (4) Wage Certificate

Date: _____

Respectfully submitted,

Telephone No: _____

Fax No: _____

E-Mail Address: _____

Authorized Signature

Offeror: _____

Payment Address: _____

Exact Legal Name

Title: _____

Street Address: _____

Hawaii General Excise
Tax I.D. No: _____

Federal I.D. No: _____

City, State, Zip Code: _____

If the offeror shown above is a "dba" or a "division" of a corporation, furnish the exact legal name of the corporation under which the contract, if awarded, will be executed:

Offeror is: ☐ Individual ☐ Partnership ☐ Corporation
 ☐ Joint Venture ☐ Limited Liability Company
 ☐ Other

State of Incorporation or Registration:

Hawaii: _____

Other: _____

If Other, is entity registered in Hawaii?

Yes: _____ No: _____

Exhibit 2 to Special Conditions

STANDARDS OF CONDUCT DECLARATION

For the purposes of this declaration:

"Agency" means and includes the State, the legislature and its committees, all executive departments, boards, commissions, committees, bureaus, offices, the University of Hawaii, and all independent commissions and other establishments of the state government but excluding the courts.

"Controlling interest" means an interest in a business or other undertaking which is sufficient in fact to control, whether the interest is greater or less than fifty percent (50%).

"Employee" means any nominated, appointed, or elected officer or employee of the State, including members of boards, commissions, and committees, and employees under contract to the State or of the constitutional convention, but excluding legislators, delegates to the constitutional convention, justices, and judges.

On behalf of _____, CONTRACTOR, the undersigned does declare as follows:

1. CONTRACTOR (is) (is not) a legislator or an employee or a business in which a legislator or an employee has a controlling interest.
2. CONTRACTOR has not been assisted or represented by a legislator or employee for a fee or other compensation to obtain this Agreement and will not be assisted or represented by a legislator or employee for a fee or other compensation in the performance of the Agreement, if the legislator or employee had been involved in the development or award of the Agreement.
3. CONTRACTOR has not been assisted or represented for a fee or other compensation in the award of this Agreement by an Agency employee or, in the case of the Legislature, by a legislator.
4. CONTRACTOR has not been represented or assisted personally on matters related to the Agreement by a person who has been an employee of the Agency within the preceding two (2) years and who participated while in state office or employment on the matter with which the Agreement is directly concerned.
5. CONTRACTOR has not been represented or assisted on matters related to this Agreement, for a fee or other consideration by an individual who, within the past twelve (12) months, has been an Agency employee, or in the case of the Legislature, a legislator.

6. CONTRACTOR has not been represented or assisted in the award of this Agreement for a fee or other consideration by an individual who, (a) within the past twelve (12) months, served as an Agency employee or in the case of the Legislature, a legislator; and (b) participated while an employee or legislator on matters related to this Agreement.

CONTRACTOR understands that the Agreement to which this document is attached is voidable on behalf of the STATE if this Agreement was entered into in violation of any provision of Chapter 84, HRS, commonly referred to as the Code of Ethics, including the provisions which are the source of the declarations above. Additionally, any fee, compensation, gift, or profit received by any person as a result of a violation of the Code of Ethics may be recovered by the State.

DATED: Honolulu, Hawaii, _____, 20 _____.

CONTRACTOR

(Insert name of Contractor)

(Signature)

(Print name)

(Print title)

(Date)

Reminder to Agency: If "is" is circled on page 9, item 1, the Agency is required, under 84-15, HRS, to post a notice of its intent to award the Agreement and file a copy of the notice with the State Ethics Commission, ten (10) days before entering the Agreement.

Exhibit 3 to Special Conditions

PREFERENCE CERTIFICATE

Subject: IFB No. 01-09

I hereby certify that I qualify for the preferences checked below based on the explanation provided:

- ☐ The Hawaii products preference, pursuant to Section 103D-1002, Hawaii Revised Statutes (HRS).
- ☐ The printing, binding, and stationery work preference, pursuant to Section 103D-1003, HRS.
- ☐ The reciprocity preference, pursuant to Section 103D-1004, HRS.
- ☐ The recycled products preference, pursuant to Section 103D-1005, HRS.
- ☐ The software development business preference, pursuant to Section 103D-1006, HRS.

For each preference checked, an explanation of qualifications is provided below.

EXPLANATIONS:

Bidder: _____

Signature: _____

Name: _____

Title: _____

Date: _____

Exhibit 4 to Special Conditions

WAGE CERTIFICATE

Subject: IFB No. 01-09

Description of Project: To Provide Printing, Sewing and Binding of the Journal of the House of Representatives

Pursuant to Section 103-55, Hawaii Revised Statutes, I hereby certify that if awarded the contract in excess of \$25,000, the services to be performed will be performed under the following conditions:

1. All applicable laws of the federal and state governments relating to workers' compensation, unemployment compensation, payment of wages, and safety will be fully complied with; and
2. The services to be rendered shall be performed by employees paid at wages or salaries not less than wages paid to the public officers and employees for similar work, with the exception of professional, managerial, supervisory, and clerical personnel who are not covered by Section 103-55, HRS.

I understand that failure to comply with the above conditions during the period of the contract shall result in cancellation of the contract, unless such noncompliance is corrected within a reasonable period as determined by the Chief Procurement Officer of the House. Payment in the final settlement of the contract or the release of bonds, if applicable, or both shall not be made unless the Chief Procurement Officer of the House has determined that the noncompliance has been corrected; and

I understand that all payments required by Federal and State laws to be made by employers for the benefit of their employees are to be paid in addition to the base wages required by Section 103-55, Hawaii Revised Statutes.

Bidder: _____

Signature: _____

Name: _____

Title: _____

Date: _____

GENERAL TERMS AND CONDITIONS

1 OFFER REQUIREMENTS AND CONDITIONS

1.1 COMPETENCY OF OFFERORS

Prospective offeror must be capable of performing the work for which offers are being called. Either before or after the deadline for an offer, the House of Representatives may require offeror to submit answers to questions regarding facilities, equipment, experience, personnel, financial status, or any other factors relating to the offeror's ability to furnish satisfactorily the goods or services being solicited by the House of Representatives. Any such inquiries shall be made and replied to in writing; replies shall be submitted over the signatures of the person who signs the offer. Any offeror who refuses to answer such inquiries will be considered nonresponsive. All answers to such questions will be handled by the House of Representatives on a confidential basis.

The officer-in-charge also reserves the right to visit an offeror's place of business to inspect the offeror's facilities and equipment, and to observe the offeror's methods of operation to facilitate evaluation of performance capabilities.

1.2 BID SUBMISSION

Prospective offerors shall submit bids in the format specified in the Special Conditions. (Exhibit 1)

The General Terms and Conditions, Special Conditions, Specifications, and other documents referenced in or attached to the solicitation shall be considered a part of the offer whether or not attached to the solicitation at the time of its submission. Such documents shall not be altered in any way when the bid is submitted and any alterations so made by the offeror may be cause for rejection of the offer.

1.3 EXAMINATION OF GENERAL TERMS AND CONDITIONS, SPECIFICATIONS

The offeror shall carefully examine the Invitation for Bids (IFB), the General Terms and Conditions, the Special Conditions, the Specifications, the State Procurement Code and regulations issued pursuant thereto, amendments, required contract forms, etc., before submitting offers. The submission of an offer shall be considered as a warranty that the offeror has made such careful examination and is satisfied with the conditions to be encountered in performing the work and with the requirements of the solicitation, General Terms and Conditions, Special Conditions, amendments, and required contract forms.

No extra compensation will be given by reason of the contractor's misunderstanding or lack of knowledge of the requirements of the work to be accomplished or the conditions to be encountered in performing the work.

1.4 PREPARATION OF OFFER

The Specifications, Special Conditions, General Conditions and other documents referenced in or attached to the offer shall be considered a part of the offer submitted, whether or not attached to the offer at the time of submission. Such documents shall not be altered in any way; any alterations so made by the offeror may result in rejection of the offer.

An offer that contains any omission, erasure, addition not called for, conditional offer or irregularity of any kind may be rejected. Corrections, if necessary, shall be made by lining out the materials to be corrected and by inserting the correction as close to the line-out as possible. Every such correction must be initialed by the person who signed the offer.

Offer price shall be all inclusive. In case of error in extension of price, unit price shall govern. Unit offer price shall include all applicable taxes and delivery charges unless otherwise stated. The State of Hawaii is exempt from the Federal Excise Tax. An exemption certificate form will be provided to the Contractor upon request.

Offeror shall submit the signed offer, together with the offer security when required, in a sealed envelope. The envelope shall be clearly identified with the firm's name and address on the upper left corner and the IFB number and opening date on the lower left corner.

Offers will be received only until the hour and date set for the opening. Whether or not offers are opened exactly at the time fixed for opening, none will be received after that time. All these conditions apply regardless of whether the offer is mailed or hand carried.

Offers submitted in response to the IFB shall be signed in ink in the space provided on the offer page by:

1. The owner of a sole proprietorship;
2. One or more members of a partnership;
3. One or more members or officers of each firm representing a joint venture;
4. One or more officers of a corporation; or
5. An agent of the offeror duly authorized to submit offers on the offeror's behalf.

1.5 PRE-OPENING MODIFICATION OR WITHDRAWAL OF OFFERS

Offers may be modified or withdrawn prior to the deadline for submittal of offers by submitting the following documents:

1. Modification of offers: a written notice received in either office designated in the solicitation, stating that a modification to the offer is submitted; or a written notice by fax or electronic mail sent to the office designated in the solicitation, stating that a modification to the offer is submitted; and the written notice accompanying the actual modification securely sealed in a separate envelope or container.

2. Withdrawal of offers: a written notice received in the office designated in the solicitation; or a notice by fax or electronic mail pursuant to section 3-122-9, HAR, to the office designated in the solicitation.

1.6 RECEIPT AND REGISTRATION OF BIDS

Bids and modifications will be time-stamped upon receipt and held in a secure place by the officer-in-charge until the established due date.

After the date established for receipt of bids, a register of bids will be prepared that shall include for all bids: the name of each offeror; the number of modifications received, if any; and a description sufficient to identify the goods or service items offered. The register will be available for inspection by appointment after award of the contract. During offer evaluation and award recommendation period, offers will not be available for inspection.

An offeror shall request in writing for nondisclosure of:

1. Designated trade secrets; or
2. Other proprietary data

and that these be kept confidential. Offerors shall ensure that such data designated as confidential will be readily separable from the offers to facilitate eventual public inspection of the nonconfidential portion of the offer.

1.7 PUBLIC OPENING OF OFFERS

Offers will be opened and read publicly at the time and place indicated by public notice. No award decision or discussion will be allowed at the opening. Offers may be inspected by any person present, however no offers shall leave the offer opening room.

1.8 LATE OFFERS, LATE WITHDRAWALS, AND LATE MODIFICATIONS

Any notice of withdrawal, notice of modification of an offer with the actual modification, or any offer received at the place designated for receipt and opening of an offer after the time and date set for receipt and opening of offers shall be a late withdrawal, late modification, or late offer. A late offer, late modification, or late withdrawal shall not be considered late if received before contract award and would have been timely but for the action or inaction of personnel within the procurement activity. A late offer or late modification that will not be considered for award will be returned to the offeror unopened as soon as practicable and accompanied by a letter from the officer-in-charge stating the reason for its return. A late withdrawal request shall be responded to with a statement of the reason for nonacceptance of the withdrawal.

1.9 MISTAKES IN OFFERS

When the officer-in-charge knows or has reason to conclude before award that a mistake has been made, the officer-in-charge should request the offeror to confirm the bid. If the offeror alleges mistake, the bid may be corrected or withdrawn pursuant to this section.

An offeror alleging a material mistake of fact which makes a bid nonresponsive may be permitted to withdraw the bid if:

1. The mistake is clearly evident on the face of the bid but the intended correct offer is not; or
2. The offeror submits evidence which clearly and convincingly demonstrates that a mistake was made.

Technical irregularities are matters of form rather than substance evident from the bid document, or insignificant mistakes that can be waived or corrected without prejudice to other offerors; that is, when there is no effect on price, quality, or quantity. The officer-in-charge may waive such irregularities or allow an offeror to correct them if either is in the best interest of the House of Representatives.

Mistakes shall not be corrected after award of contract.

1.10 DISQUALIFICATION OF OFFERORS

Any one or more of the following causes will be considered as sufficient for disqualification of the offeror:

1. Offer not signed by an authorized individual;
2. More than one offer from an individual, firm, corporation or joint venture under the same or different names;
3. Evidence of collusion among offerors or offer prices obviously unbalanced, lack of responsibility and cooperation as shown by past work, being in arrears on existing contracts with the State of Hawaii, or defaulting on previous contract(s);
4. Failure of offeror to submit offer security when required;
5. Lack of proper equipment and/or sufficient experience to perform the work contemplated;
6. Offer received after specified deadline for opening of offers;
7. Offer not accompanied by an offer guaranty, if required; and
8. Evidence of any noncompliance with any applicable law, any unauthorized additions or deletions, or submission of conditional offer, incomplete offer, or irregularities of any kind which may make the offer incomplete, indefinite, or ambiguous as to its meaning.

1.11 STANDARDS OF CONDUCT

Section 84-15, HRS, provides as follows:

(a) A state agency shall not enter into any contract to procure or dispose of goods or services, or for construction, with a legislator, an employee, or a business in which a legislator or an employee has a controlling interest, involving services or property of a value in excess of \$10,000 unless:

- (1) The contract is awarded by competitive sealed bidding pursuant to section 103D-302;*
- (2) The contract is awarded by competitive sealed proposal pursuant to section 103D-303; or*
- (3) The agency posts a notice of its intent to award the contract and files a copy of the notice with the state ethics commission at least ten days before the contract is awarded.*

(b) A state agency shall not enter into a contract with any person or business which is represented or assisted personally in the matter by a person who has been an employee of the agency within the preceding two years and who participated while in state office or employment in the matter with which the contract is directly concerned.

2 TAXES AND PREFERENCE, ACCEPTANCE, AND EXECUTION OF CONTRACT

2.1 TAXES AND PREFERENCE

2.1.1 Taxes

The bid prices shall include all applicable taxes other than the Federal Excise Tax for which exemptions may be claimed. In the State of Hawaii, applicable taxes include:

1. The general excise tax (Chapter 237, HRS) (currently four percent) which is a tax on gross income derived from business activity in the State and is imposed on the business receiving the income for the privilege of doing business in Hawaii; and
2. The county surcharge on state tax (Section 237-8.6, HRS) (currently one-half per cent) is imposed on the gross proceeds or gross income generated in the City and County of Honolulu taxable under the general excise tax (Chapter 237, HRS).
3. A use tax (Chapter 238, HRS) (currently one-half of one percent) on the landed value of tangible property imported into Hawaii. The landed value is the cost plus shipping, handling, etc.; that is, the value of the property at the time it arrives in Hawaii.

If final acceptance of goods occurs in Hawaii or services are performed in Hawaii and in the City and County of Honolulu under this IFB, the transaction shall be taxable in accordance with Chapter 237, HRS, and the bidder receiving an award for these goods or services will be required to pay the applicable State of Hawaii General Excise Tax and the county surcharge on state tax. In addition, in accordance with Chapter 238, HRS, if tangible property is imported into Hawaii for resale at retail or for rent or lease, the offeror will be subject to the applicable use tax on the landed value of the property.

For a general overview of Hawaii State Taxes, you may access the State of Hawaii Department of Taxation's website at www.hawaii.gov/tax

Questions pertaining to taxes should be directed to DOTAX, Oahu District, P.O. Box 259, Honolulu, Hawaii 96809-0259, telephone (808) 587-4242.

Out-of-state vendors are encouraged to contact DOTAX, telephone 1-800-222-3229, regarding their specific circumstances.

2.1.2 Tax Equalization

Section 103D-1008, HRS, provides that, for evaluation purposes, the bidder's tax-exempt price shall be increased by the applicable retail rate of general excise tax and the applicable use tax; and that for competitive sealed bids, the lowest responsive, responsible bidder, taking into consideration the above increase, shall be awarded the contract. The contract amount of any contract awarded shall be the amount of the price offered and shall not include the amount of the increase.

Each offeror possessing a Hawaii I.D. number for a General Excise Tax License shall enter it in the space provided in the Bid Summary Form, thereby attesting that the business is being conducted in the State and that such taxes will be paid on all sales made to the State. Any offeror who does not furnish a valid Hawaii General Excise Tax License number in the space provided shall be considered as not doing business in the State and its bid will be evaluated accordingly.

2.1.3 Tax Clearance Requirements

Offerors shall submit proof of tax clearance from DOTAX and the Internal Revenue Service using Form A-6 with the sealed bid by the date and time due. The tax clearance submitted may be an original or a certified copy.

Offerors shall complete and mail the Tax Clearance Application (Form A-6) to a DOTAX district office as soon as possible, as the process may take 21 calendar days before a clearance is received. Tax clearance is valid for only 45 days. If DOTAX approves a tax clearance on one date and the Internal Revenue Service approves it on another date, the 45-day period will begin with the later date.

For sealed bid submittal purposes, an offeror's tax clearance shall be valid on the solicitation's legal advertisement date or any date thereafter up to the bid receipt deadline.

2.1.4 Preference for Hawaii Products

Section 103D-1002, HRS, provides as follows:

§103D-1002 Hawaii products. (a) *A purchasing agency shall review all specifications in a bid or proposal for purchase from the Hawaii products list where these products are available; provided that the products:*

- (1) Meet the minimum specifications and the selling price f.o.b. jobsite;*
- (2) Unloaded including applicable general excise tax and use tax does not exceed the lowest delivered price in Hawaii f.o.b. jobsite; and*
- (3) Unloaded, including applicable general excise tax and use tax, does not exceed the lowest delivered price of a similar non-Hawaii product by more than:*
 - (A) Three per cent where class I Hawaii products are involved;*
 - (B) Five per cent where class II Hawaii products are involved; or*
 - (C) Ten per cent where class III Hawaii products are involved.*

(b) All invitations for bids and requests for proposals shall include a description of the products that are listed in the Hawaii products list established pursuant to this section, and their established classes, which may be used to complete the scope of work specified in the invitation for bids or request for proposals, where the products are available and meet the minimum specifications.

(c) All persons submitting bids or proposals to claim a Hawaii products preference shall designate in their bids which individual product and its price is to be supplied as a Hawaii product.

(d) Where a bid or proposal contains both Hawaii and non-Hawaii products, then for the purpose of selecting the lowest bid or purchase price only, the price bid or offered for a Hawaii product item shall be decreased by subtracting therefrom: three per cent, five per cent, or ten per cent for the class I, class II, or class III Hawaii product items bid or offered, respectively. The lowest total bid or proposal, taking the preference into consideration, shall be awarded the contract unless the bid or offer provides for additional award criteria. The contract amount of any contract awarded, however, shall be the amount of the bid or price offered, exclusive of the preferences.

(e) Upon receipt and approval of application for Hawaii products preference, the administrator shall include within the Hawaii products list, the names of producers and manufacturers in the State who are authorized to supply locally manufactured soil enhancement products to state agencies under subsection (h). The administrator of the state procurement office shall maintain and distribute copies of the list to the purchasing agencies of the various governmental agencies.

(f) This section shall not apply whenever its application will disqualify any governmental agency from receiving federal funds or aid.

(g) Any purchase made or any contract awarded or executed in violation of this section shall be void and no payment shall be made by any purchasing agency on account of the purchase or contract.

(h) For the purposes of this section, "soil enhancement product" means any nonchemical soil preparation, conditioner, or compost mixture designed to supplement aeration or add organic, green waste, or decaying matter to the soil; provided that the term does not include any plant fertilizer intended to stimulate or induce plant growth through chemical means. All state agencies shall include in their solicitations, when required, the soil enhancement products identified on the Hawaii products list pursuant to subsection (e).

The offeror shall also refer to Subchapter 1, sections 3-124-1 through 3-124-8, HAR, that provide procedures for qualifying and registering products on the Hawaii products list and for the application of preferences thereof.

2.1.5 Printing Preference

Section 103D-1003, HRS, provides as follows:

§103D-1003 Printing, binding, and stationery work. (a) All bids submitted for a printing, binding, or stationery section 103D-302 contract in which all work will be performed in-state, including all preparatory work, presswork, bindery work, and any other production-related work, to include storage and shipping costs, shall receive a fifteen per cent preference for purposes of bid evaluation.

(b) Where bids are for work performed in-state and out-of-state, then for the purpose of selecting the lowest bid submitted only, the amount bid for work performed out-of-state shall be increased by fifteen per cent. The lowest total bid, taking the preference into consideration, shall be awarded the contract unless the solicitation provides for additional award criteria. The contract amount awarded, however, shall be the amount of the price offered, exclusive of the preference.

The offeror shall also refer to Subchapter 2, sections 3-124-10 through 3-124-12, HAR, that provide procedures for the application of the preference for printing, binding, and stationery work, including all preparatory work, presswork, bindery work, and any other production-related work performed within the state.

2.1.6 Reciprocal Preference

Section 103D-1004, HRS, provides as follows:

§103D-1004 Reciprocity. (a) *To ensure fair and open competition for Hawaii businesses engaged in contracting with other states, the chief procurement officer may impose a reciprocal preference against bidders from those states which apply preferences. The amount of the reciprocal preference shall be equal to the amount by which the non-resident preference exceeds any preference applied by this State.*

In determining whether a bidder qualifies as a resident bidder, the definition used by the other state in applying a preference shall apply.

- (b) *The policy board shall adopt rules to implement this section.*
- (c) *This section shall not apply to any transaction if the provisions of the section conflict with any federal laws.*

The offeror shall also refer to Subchapter 3, sections 3-124-15 through 3-124-18, HAR, that provide procedures for the application of the reciprocal preference.

2.1.7 Recycled Products Preference

Section 103D-1005, HRS, provides as follows:

§103D-1005 Recycled products. (a) *To encourage the use of recycled products, contracts shall be awarded to the lowest responsible and responsive bidders, with preference being given to the products containing recycled material. The policy board shall adopt rules in accordance with chapter 91 governing preference for recycled products. The rules shall establish percentages of preference and the method of determining the contents of recycled material to qualify various products for preference.*

(b) *The state procurement office, with the assistance of the office of solid waste management in the department of health as provided in section 342G-42, shall develop a recycled product procurement program that shall require state purchasing agencies and urge county purchasing agencies to:*

- (1) *Apply preference to the purchase of products with recycled content before purchasing products without any recycled content;*
- (2) *Be consistent with applicable federal specification standards incorporated in Executive Order No. 12873, signed by the President of the United States on October 20, 1993, and any subsequent amendments to that order; and*
- (3) *Ensure, to the maximum extent economically feasible, the purchase of materials that may be recycled or reused when discarded, and to avoid the purchase of products deemed environmentally harmful.*

(c) *In addition to the requirements for the purchase of office paper and printed material under subsection (e), and when appropriate, purchase specifications shall include, but not be limited to, paper, paper products, glass and glass by-products, plastic products, mulch and soil amendments, tires, batteries, oil, paving materials and base, subbase, and pervious backfill materials. Paving materials to be considered shall include, but are not limited to, asphalt, tires, crushed concrete for base, subbase, and paving materials. The standards and specifications shall provide for the use of recycled materials and shall not reduce the quality standards for highway and road construction.*

(d) *The chief procurement officers shall periodically review their specifications to determine whether discrimination against procured goods with recycled contents exists and shall revise these specifications to eliminate any such discrimination.*

(e) *When purchasing office paper and printed material, state purchasing agencies shall, and county purchasing agencies are urged to, purchase only office paper and printed material with recycled content, except when statutory, regulatory, or contractual requirements preclude the purchase of office paper or printed material with recycled contents of the same type and quantity as the office paper or printed material without recycled content.*

The offeror shall also refer to Subchapter 4, sections 3-124-20 through 3-124-26, HAR that establishes percentages of preference, the method of determining the recycled content to qualify various products for preference, and the application of the preference.

2.1.8 Low Tie Offers

Subchapter 5, section 3-122-34, HAR, provides in pertinent part as follows:

(a) *Low tie bids are bids from responsive, responsible bidders that are identical in price and which meet all the requirements and criteria set forth in the invitation for bids.*

(b) *At the discretion of the procurement officer, award shall be made in any permissible manner that will resolve tie bids, including but not limited to:*

(1) *Award the contract to a business providing goods produced or manufactured in this State or to a business that otherwise maintains a place of business in this State; and*

(2) *Award the contract to the bidder offering a low tie bid who received the previous award, and continue to award succeeding contracts to the same bidder so long as all low bids are identical.*

(c) *If no permissible method will be effective in resolving tie bids and a written determination is made so stating, award may be made by drawing lots.*

(d) *Records shall be made of all invitations for bids on which tie bids are received showing at least the following information and shall be made a part of the procurement file:*

- (1) *The identification number of the invitation for bids;*
- (2) *The good, service, or construction item; and*
- (3) *A listing of all the bidders and the prices submitted.*

2.2 AWARD OF BID

In determining the responsive and responsible offeror, offers will be evaluated not only on the costs thereof, but on all factors relating to the satisfactory performance of the contract. Goods must be of a quality and nature that will meet the needs and purposes of the intended use and must conform to all requirements prescribed in the General Terms and Conditions, the Specifications and the Special Conditions. The offeror must have the ability to perform as called for in the contract terms. The House of Representatives shall be the sole judge of product or offeror capability. The successful offeror will be notified by letter that the offer has been accepted and that the offeror is being awarded the contract.

If an offer is rejected or if the offeror to whom the contract was awarded fails to enter into the contract and furnish satisfactory security, if applicable, the House of Representatives may, at its discretion, award the contract to the next lowest or remaining responsible offeror or may publish another call for offers; provided in the case of only one remaining responsible offeror, the officer-in-charge may negotiate with such offeror to reduce the scope of work, if available funds are exceeded, and to award the contract at a price that reflects the reduction in the scope of work.

The House of Representatives further reserves the right to cancel the contract award at any time prior to execution of the contract by all parties, without any liability to the awardee and to any other offeror.

2.3 EXECUTION OF CONTRACT

Upon award of bid, the House of Representatives shall forward a formal contract to the successful offeror for execution. The contract shall be signed by the successful offeror and returned, together with satisfactory performance or payment bonds if required, and other supporting documents, within ten days after receipt by the offeror or within such further time as the chief procurement officer may allow. The contract shall bind the contractor to perform in accordance with the General Terms and Conditions, the Special Conditions, the Specifications, the State Procurement Code and the regulations pursuant thereto and other documents related to the IFB and the offer.

No such contract shall be considered binding upon the House of Representatives until the contract has been fully and properly executed by all the parties thereto and the chief procurement officer of the House of Representatives has, in accordance with Section 103D-309, HRS, endorsed thereon a certificate that there is an appropriation or balance of an appropriation over and above all outstanding contracts, sufficient to cover the amount required by the contract; with the exception of a multi-term contract, whereby, the chief procurement officer of the House of Representatives shall only be required to certify that there is an

appropriation or balance of an appropriation over and above all outstanding contracts, that is sufficient to cover the amount required to be paid under the contract during the fiscal year or remaining portion of the fiscal year of each term of the multi-year contract.

If the successful offeror is not a sole proprietorship, it shall submit satisfactory evidence, e.g. certificate of corporate resolution, power of attorney, or other evidence of authority, of the signers' authority to execute the contract on its behalf. If such document has been submitted to the House of Representatives on a previous occasion, the successful offeror may submit a copy of this document, provided there has been no amendment, modification, or rescission of the document previously submitted, and provided further that no such copy shall be acceptable unless the date of the document previously submitted is dated within one year of the contract date. If there has been a modification, amendment, or rescission of the evidence of authority previously submitted, then the superseding document shall be attached to the contract.

2.4 PERFORMANCE OR PAYMENT BONDS

As guaranty of faithful performance, the successful offeror must deposit legal tender, certificate of deposit, certified check or cashier's check drawn on a bank, savings institution, or credit union insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration, or execute a surety bond on the form furnished by the House of Representatives conditioned on the full and faithful performance of the contract in accordance with the terms and intent thereof and also for the prompt payment to all others for all labor and materials furnished by them to the contractor and used in the prosecution of the work provided for in such contract in the manner, form, and amount required by Section 103D-324, HRS. In addition, a power of attorney for the agent of the surety executing the bond shall be submitted.

The aforesaid security shall be held by the House of Representatives upon the terms and conditions and with the powers and subject to the trusts specified in Section 103D-324, HRS.

3 PERFORMANCE OF CONTRACT

3.1 CONTRACT ADMINISTRATION

It is expressly understood and agreed that the contractor is an independent contractor, with the authority to control and direct the performance and details of the work and services herein contemplated; however, the House of Representatives retains the general right of inspection by a designated representative to judge whether, in the opinion of the House of Representatives, such work is being performed by the contractor in accordance with the terms of this agreement.

3.2 COMPLIANCE WITH CONTRACT TERMS, ETC.

The work shall be completed in conformity with each and every requirement of the General Terms and Conditions, the Specifications, the Special Conditions and all other provisions forming a part of the contract. In the event the contractor fails to so perform, the chief procurement officer of the House of Representatives, in addition to any other recourse,

reserves the right to suspend the contractor from bidding on any or all House contracts pursuant to Chapter 3-126, HAR.

3.3 CHANGE ORDERS AND MODIFICATIONS

The contractor will not undertake to perform the portion of the work affected by the changes until a change order or modification has been approved and issued.

3.4 DELIVERY EXTENSIONS

In the case of contracts for the purchase of goods, the delivery date or the maximum number of days for delivery will be specified by the House of Representatives in its solicitation requirements, and all goods must be delivered within the time specified. However, the contractor will not be held responsible for delay due to fire, flood, riot, labor disturbances, war, shortage of transportation, acts of God, or other reason beyond the contractor's control, provided that the contractor notifies the House of Representatives of such delay and the reason therefor as soon as practicable after its occurrence and requests an extension prior to the specified date of delivery. Requests for extensions of time shall be accompanied by documents such as the contractor's purchase order, manufacturer's acknowledgement, shipping manifest, and any other documents substantiating that the causes for delay were beyond the control of the contractor. The chief procurement officer shall be the sole judge of whether such delay is truly beyond the control of the contractor and whether an extension will be granted. The chief procurement officer reserves the right to terminate the contract or to assess liquidated damages, if provided for in the contract, for delays not covered by a specific authorized extension.

4 LEGAL RELATIONS AND RESPONSIBILITY

4.1 LAWS TO BE OBSERVED

The contractor shall at all times observe and comply with all federal, state, and county laws, ordinances, rules, and regulations that in any manner affect those engaged or employed in the performance of the work, the manufacture and sale of materials and equipment required under the contract, and the conduct of the work. The contractor shall also comply with all such orders and decrees of bodies or tribunals having any jurisdiction or authority over the work. Any reference to such laws, ordinances, rules, and regulations shall include any amendments thereto.

The contractor shall protect and indemnify the House of Representatives and all its members, officers, agents, and employees against any claim or liability arising from or based on the violation of any such laws, ordinances, rules, regulations, orders, and decrees, whether such violation is committed by the contractor or the contractor's subcontractor, or an employee of either. If any discrepancy or inconsistency is discovered in the contract for the work in relation to any such laws, ordinances, rules, regulations, orders, or decrees, the contractor shall immediately report the discrepancy or inconsistency to the chief procurement officer in writing.

The contractor's attention is especially directed to Chapters 103 and 103D, HRS, and Title 3, Subtitle 11, Chapters 120 through 131, HAR, issued by the procurement policy board.

4.2 PATENT INDEMNITY

If any suit, claim, action, or proceeding against the House of Representatives arises from an allegation that the equipment, supplies, or services provided hereunder, or any one of them, or any part of them, constitute infringement of any United States Patent or pending application for Letters Patent or an infringement of trademark or copyright, the contractor shall defend the House of Representatives' right, title, and expense, provided that the House of Representatives promptly notifies the contractor in writing of such suit, claim, action, proceeding, or allegation.

The contractor shall have the right to make such defense by counsel of its choosing and the House of Representatives shall cooperate with said counsel and the contractor therein.

The contractor shall pay all expenses incurred in such defense including, but not limited to, damages in law, relief in equity, settlement or compromise amounts, courts costs, and attorneys' fees.

4.3 SUBCONTRACTING AND ASSIGNING

The contractor shall not:

1. Subcontract any of the work to be performed under the contractor's contract with the House of Representatives without the prior approval of the chief procurement officer; or
2. Assign the contract to any other person or firm without written permission from the chief procurement officer.

Any subcontract or assignment made without written permission from the chief procurement officer will not be recognized. No subcontract shall, under any circumstances, relieve the contractor of the contractor's obligation and liability under the contractor's contract with the House of Representatives. All persons engaged in performing the work covered by the contract shall be considered employees of the contractor.

4.4 RESPONSIBILITY FOR DAMAGE CLAIMS

The contractor shall indemnify, hold harmless, and defend the House of Representatives and its members, officers, employees, agents, from all suits, actions, claims, damages, and judgments of any character that may be brought against the House of Representatives on account of any injuries or damages sustained by any person or to any property, due to the negligent acts or omission by the contractor, or any of the contractor's officers, employees, subcontractors, assignees, or representatives, in the performance of the contract.

4.5 PERSONAL LIABILITY OF PUBLIC OFFICIALS

In carrying out any of the provisions of the contract or in exercising any power or authority granted to the chief procurement officer of the House of Representatives by the

contract, there shall be no liability upon such officer or the authorized representative of such officer, either personally or as official of the House of Representatives, it being understood that in such matters, they act solely as agents and representatives of the House of Representatives.

5 MODIFICATIONS AND TERMINATIONS OF CONTRACTS FOR GOODS AND SERVICES

5.1 CONTRACT CHANGE ORDERS

By written order, at any time, and without notice to any surety, the chief procurement officer may, unilaterally, order the contractor to make:

1. Changes in the work within the scope of the contract; and
2. Changes in the time of performance of the contract that do not alter the scope of the contract work.

If any change order increases or decreases the contractor's cost of, or the time required for, performance of any part of the work under this contract, whether or not changed by the order, an adjustment shall be made and the contract modified in writing accordingly. Any adjustment in contract price made pursuant to this section shall be determined in accordance with the price adjustment clause of the contract as negotiated. Failure of the parties to agree to an adjustment shall not excuse the contractor from proceeding with the contract as changed, provided that the officers promptly and duly make such provisional adjustments in payment or time for the direct costs of the work as the House of Representatives deems reasonable. The right of the contractor to dispute the contract price or time or both shall not be waived by its performing the work, provided however, that it follows the notice requirements for disputes and claims established by the contract or the HAR.

Within ten days after receipt of a written change order, unless such period is extended by the officer-in-charge in writing, the contractor shall respond with a claim for an adjustment. The requirement for a timely written response cannot be waived and shall be a condition precedent to the assertion of a claim.

No claim by the contractor for an adjustment hereunder shall be allowed if written notice is not given prior to final payment under this contract.

In the absence of such a change order, nothing in this clause shall be deemed to restrict the contractor's right to pursue a claim as permitted under the contract or for breach of contract.

5.2 CONTRACT MODIFICATIONS

By written order at any time and without notice to any surety, the chief procurement officer of the House of Representatives, subject to mutual agreement of the parties to the contract and all appropriate adjustments, may make modifications within the general scope of this contract to include any one or more of the following:

1. Drawings, designs, or specifications for the goods to be furnished;
2. Method of shipment of packing;

3. Place of delivery;
4. Description of services to be performed;
5. Time of performance (i.e., hours of the day, days of the week, etc.);
6. Place of performance of the services; or
7. Other provisions of the contract accomplished by mutual action of the parties to the contract.

If any modification increases or decreases the contractor's cost of, or the time required for, performance of any part of the work under this contract, an adjustment shall be made and the contract modified in writing accordingly. Any adjustment in contract price made pursuant to this clause shall be determined, where applicable, in accordance with the price adjustment clause of this contract or as negotiated.

No claim by the contractor for an adjustment hereunder shall be allowed if written agreement of modification is not made prior to final payment under this contract.

In the absence of a contract modification, nothing in this clause shall be deemed to restrict the contractor's right to pursue a claim under the contract or for a breach of contract.

5.3 STOP WORK ORDERS

5.3.1 Order to Stop Work

The chief procurement officer of the House of Representatives, may, by written order to the contractor, at any time, and without notice to any surety, require the contractor to stop all or any part of the work called for by this contract. This order shall be for a specified period not exceeding 60 days after the order is delivered to the contractor, unless the parties agree to any further period. Any such order shall be identified specifically as a stop work order issued pursuant to this section. Upon receipt of such an order, the contractor shall forthwith comply with its terms and take all reasonable steps to minimize the occurrence of costs allocable to the work covered by the order during the period of work stoppage.

Before the stop work order expires, or within any further period to which the parties shall have agreed, the chief procurement officer of the House of Representatives shall either:

1. Cancel the stop work order; or
2. Terminate the work covered by such order as provided in the "termination for default" clause or the "termination for convenience" clause of the contract.

5.3.2 Cancellation or Expiration of the Order

If a stop work order issued under this section is canceled at any time during the period specified in the order, or if the period of the order or any extension thereof expires, the contractor shall have the right to resume work. An appropriate adjustment shall be made in the delivery schedule or contract price, or both, and the contract shall be modified in writing accordingly, if:

1. The stop work order results in an increase in the time required for, or in the contractor's cost properly allocable to, the performance of any part of this contract; and
2. The contractor asserts a claim for such an adjustment within 30 days after the end of the period of work stoppage; provided that, if the chief procurement officer of the House of Representatives decides that the facts justify such action, any such claim asserted may be received and acted upon at any time prior to final payment under this contract.

5.3.3 Termination of Stopped Work

If a stop work order is not canceled and the work covered by such order is terminated for default or convenience, the reasonable costs resulting from the stop work order shall be allowable by adjustment or otherwise.

5.3.4 Adjustment of Price

Any adjustment in contract price made pursuant to this clause shall be determined in accordance with the price adjustment clause of this contract.

5.4 VARIATIONS IN QUANTITIES FOR DEFINITE QUANTITY CONTRACTS

Upon the agreement of the parties, the quantity of goods or services, or both, specified in this contract may be increased by a maximum of ten percent provided that:

1. The unit prices will remain the same except for any price adjustments otherwise applicable; and
2. The chief procurement officer of the House of Representatives makes a written determination that such an increase will either be more economical than awarding another contract or that it would not be practical to award another contract.

5.5 PRICE ADJUSTMENT

Any adjustment in contract price pursuant to a provision in the contract shall be made in one or more of the following ways:

1. By agreement on a fixed price adjustment before commencement of the pertinent performance or as soon thereafter as practicable;

2. By unit prices specified in the contract or subsequently agreed upon;
3. By the costs attributable to the event or situation covered by the clause, plus appropriate profit or fee, all as specified in the contract or subsequently agreed upon;
4. In such other manner as the parties may mutually agree; or
5. In absence of agreement between the parties, by unilateral determination by the chief procurement officer of the costs attributable to the event or situation covered by the clause, plus appropriate profit or fee, all as computed by the officer in accordance with generally accepted accounting principles and applicable sections of Chapters 3-123 and 3-126, HAR.

The contractor shall provide cost or pricing data for any price adjustments subject to the provisions of Subchapter 15, Chapter 3-122, HAR.

5.6 ASSIGNMENT OR CHANGE OF NAME

No contract is transferable, or otherwise assignable, without the written consent of the chief procurement officer of the House of Representatives, provided that a contractor may assign moneys receivable under a contract after due notice to the House of Representatives. A transfer or assignment which requires the consent of the chief procurement officer includes a change in ownership of the contractor.

If in the best interest of the House of Representatives, a successor in interest may be recognized in an assignment in which the transferor and the transferee shall agree that:

1. The transferee assumes all of the transferor's obligations;
2. The transferor waives all rights under the contract as against the House of Representatives; and
3. Unless the transferor guarantees performance of the contract by the transferee, the transferee shall furnish all required bonds.

When a contractor requests to change the name in which it holds a contract with the House of Representatives, the chief procurement officer of the House of Representatives responsible for the contract shall, upon receipt of a document indicating such change of name (for example an amendment to the articles of incorporation of the corporation), enter into an agreement with the requesting contractor to effect such a change of name. The agreement changing the name shall specifically indicate that no other terms and conditions of the contract are thereby changed.

5.7 CLAIMS BASED ON ACTIONS OR OMISSIONS

If any action or omission on the part of a chief procurement officer of the House of Representatives or designee of such officer, requiring performance changes within the scope of the contract constitutes the basis for a claim by the contractor for additional compensation, damages, or an extension of time for completion, the contractor shall continue with

performance of the contract in compliance with the directions or orders of such official, but by so doing, the contractor shall not be deemed to have prejudiced any claim for additional compensation, damages, or an extension of time for completion; provided:

1. The contractor shall have given written notice to the chief procurement officer of the House of Representatives:
 - a. Prior to the commencement of the work involved, if at that time the contractor knows of the occurrence of such action or omission;
 - b. Within 30 days after the contractor knows of the occurrence of such action or omission, if the contractor did not have such knowledge prior to the commencement of the work; or
 - c. Within such further time as may be allowed by the chief procurement officer of the House of Representatives in writing;
2. The notice shall state that the contractor regards the act or omission as a reason which may entitle the contractor to additional compensation, damages, or an extension of time. The chief procurement officer of the House of Representatives, upon receipt of such notice may rescind such action, remedy such omission, or take such other steps as may be deemed advisable in the discretion of the procurement officer;
3. The notice required by paragraph 1 describes as clearly as practicable at the time the reasons why the contractor believes that additional compensation, damages, or extension of time may be remedies to which the contractor is entitled; and
4. The contractor maintains and, upon request, makes available to the chief procurement officer of the House of Representatives within a reasonable time, detailed records to the extent practicable, of the claimed additional costs or basis for an extension of time in connection with such changes.

Nothing herein contained, shall excuse the contractor from compliance with any rules of law precluding any legislative officers and any contractors from acting in collusion or bad faith in issuing or performing change orders which are clearly not within the scope of the contract.

Any adjustment in the contract price made pursuant to this clause shall be determined in accordance with the price adjustment clause of the contract.

5.8 TERMINATION FOR DEFAULT

5.8.1 Termination for Default

If the contractor refuses or fails to perform any of the provisions of this contract with such diligence as will ensure its completion within the time specified in this contract, or any extension thereof, otherwise fails to timely satisfy the contract provisions, or commits any other substantial breach of this contract, the chief procurement officer of the House of Representatives may notify the contractor in writing of the delay or nonperformance, and if not cured in 10 days or any longer time specified in writing by the officer, the chief procurement

officer of the House of Representatives may terminate the contractor's right to proceed with the contract or such part of the contract as to which there has been delay or other breach of contract. In the event of termination in whole or in part, the chief procurement officer of the House of Representatives may procure similar goods or services in a manner and upon terms deemed appropriate by the officer. The contractor shall continue performance of the contract to the extent it is not terminated and shall be liable for excess costs incurred in procuring similar goods or services.

5.8.2 Contractor's Duties

Notwithstanding termination of the contract and subject to any directions from the chief procurement officer of the House of Representatives, the contractor shall take timely and necessary action to protect and preserve property in the possession of the contractor in which the House of Representatives has an interest.

5.8.3 Compensation

Payment for completed goods delivered and accepted by the House of Representatives shall be at the contract price. Payment for the protection and preservation of property shall be in an amount agreed upon by the contractor and chief procurement officer of the House of Representatives; if the parties fail to agree, the chief procurement officer shall set an amount subject to the contractor's rights under Chapter 3-126, HAR. The House of Representatives may withhold from amounts due to the contractor such sums as the chief procurement officer deems necessary to protect the House of Representatives against loss because of outstanding liens or claims of former lien holders and to reimburse the House of Representatives for the excess costs incurred in procuring similar goods and services.

5.8.4 Excuse for Nonperformance or Delayed Performance

Except with respect to defaults of subcontractors, the contractor shall not be in default by reason of any failure in performance of this contract in accordance with its terms, including any failure by the contractor to make progress in the prosecution of the work hereunder which endangers such performance, if the contractor has notified the officer-in-charge as soon as practicable after the cause of delay or nonperformance and the failure arises out of causes such as fire, flood, riot, labor disturbances, war, shortage of transportation, acts of God, or other reason beyond the contractor's control. If the failure to perform is caused by the failure of a subcontractor to perform or to make progress, and if the failure arises out of causes similar to those set forth above, the contractor shall not be deemed to be in default, unless the goods or services to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit the contractor to meet the contract requirements.

Upon request of the contractor, the officer-in-charge shall ascertain the facts and extent of the failure, and, if such officer determines that any failure to perform was occasioned by any one or more of the excusable causes, and that, but for the excusable cause, the contractor's progress and performance would have met the terms of the contract, the delivery schedule shall be revised accordingly, subject to the rights of the House of Representatives under the clause entitled in fixed-price contracts, "Termination for Convenience" and in cost-reimbursement contracts, "Termination". As used in this section, the term "subcontractor" means subcontractor at any tier.

5.9 REMEDIES

5.9.1 No Limitation of Remedies

There shall be no limitation on the contractor's liability for claims for personal injury or damage to real property caused by the contractor's negligence or breach of warranty; nor shall any limitation apply to the payment by the contractor of costs, damages, and attorney's fees referred to in the section entitled, "PATENT INDEMNITY".

When the contractor's goods or services furnished under the contract fail to perform or fail to meet the requirements of the Specifications as warranted, the House of Representatives' remedy shall be as follows:

1. Adjustment, repair of, or replacement of the goods or services, all within a reasonable time; or
2. If, after repeated efforts, the contractor is unable to restore the failing goods or services or their replacement to good working order, or correct errors to function, all as warranted, and all within a reasonable time, the House of Representatives may recover actual damages from the contractor as follows:
 - a. Regardless of the form of action, whether in contract or in tort, including negligence, the contractor's liability shall be limited to the greater of \$100,000 or the purchase price of the faulty goods or services that caused the damages, or is the subject of, or is directly related to the cause of action;
 - b. The contractor shall not be held liable for lost profits, lost savings, other consequential damages, or damages caused by the negligence of the legislative staff or the failure of the House of Representatives to perform its responsibilities;
 - c. The contractor shall not be held liable for loss of funds contained in, dispensed by, or associated with any product under the contract; and
 - d. The House of Representatives may recover actual damages to the limits set forth in this provision for any other claims concerning performance or nonperformance of the contractor or its equipment pursuant to, or in any way related to the contract.

5.9.2 Liquidated Damages

When the contractor is given notice of delay or nonperformance as specified in section 5.8.1 (Termination for Default) and fails to cure in the time it is agreed, the contractor shall pay to the House of Representatives liquidated damages in the amount set forth in the Special Conditions per calendar day from the date set for cure until either:

1. The House of Representatives reasonably obtains similar goods or services if the contract is terminated for default; or
2. The contractor provides the supplies or services if the contractor is not terminated for default.

To the extent that the contractor's delay or nonperformance is excused under section 5.8.4 (Excuse for Nonperformance or Delayed Performance), liquidated damages shall not be due the House of Representatives. The contractor remains liable for damages caused other than by delay.

5.9.3 Additional Rights and Remedies

The rights and remedies provided in this request for bids are in addition to any other rights and remedies provided by law.

5.9.4 Suspension of Contractor

If the contractor fails to perform in accordance with each and every requirement of the General Terms and Conditions, the Special Conditions, the Specifications, or any other provision of the contract, the chief procurement officer of the House of Representatives, in addition to any other recourse, reserves the right to suspend the contractor from submitting offers for any of the purchases of the House of Representatives for a period as determined by the chief procurement officer of the House of Representatives pursuant to Chapter 3-126, HAR.

5.10 TERMINATION FOR CONVENIENCE

5.10.1 Termination for Convenience

The chief procurement officer of the House of Representatives may, when the interests of the House of Representatives so require, terminate this contract in whole or in part, for the convenience of the House of Representatives. Said chief procurement officer shall give written notice of the termination to the contractor specifying the part of the contract terminated and when termination becomes effective.

5.10.2 Contractor's Obligations

The contractor shall incur no further obligations in connection with the terminated work and on the dates set in the notice of termination the contractor will stop work to the extent specified. The contractor shall also terminate outstanding orders and subcontracts as they relate to the terminated work. The contractor shall settle the liabilities and claims arising out of the termination of subcontracts and orders connected with the terminated work subject to the approval of the House of Representatives. The chief procurement officer of the House of Representatives may direct the contractor to assign the contractor's right, title, and interest under terminated orders or subcontracts to the House of Representatives. The contractor must still complete the work not terminated by the notice of termination and may incur obligations as are necessary.

5.10.3 Right to Goods

The chief procurement officer of the House of Representatives may require the contractor to transfer title and deliver to the House of Representatives in the manner and to the extent directed by said chief procurement officer:

1. Any completed goods; and
2. The partially completed goods and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights, hereinafter called "manufacturing material," as the contractor has specifically produced or specially acquired for the performance of the terminated part of this contract.

The contractor shall, upon direction of the chief procurement officer of the House of Representatives, protect and preserve property in the possession of the contractor in which the House of Representatives has an interest. If the said chief procurement officer does not exercise this right, the contractor shall use best efforts to sell such goods and manufacturing materials. Use of this section in no way implies that the House of Representatives has breached the contract by exercise of the termination for convenience clause.

5.10.4 Compensation

1. The contractor shall submit a termination claim specifying the amounts due based on the termination for convenience together with cost or pricing data to the extent required by Subchapter 15, Chapter 3-122, HAR, bearing on such claim. If the contractor fails to file a termination claim within one year from the effective date of termination, the chief procurement officer of the House of Representatives may pay the contractor, if at all, an amount set in accordance with paragraph 3c.
2. The chief procurement officer of the House of Representatives and the contractor may agree to settlement provided the contractor has filed a termination claim supported by cost or pricing data to the extent required by Subchapter 15, Chapter 3-122, HAR, and that the settlement does not exceed the total contract price plus settlement costs reduced by payments previously made by the House of Representatives, the proceeds of any sales of goods and manufacturing materials under section 5.10.3, and the contract price of the work not terminated.
3. Absent complete agreement under paragraph 2, the chief procurement officer of the House of Representatives shall pay the contractor the following amounts, provided payments agreed to under paragraph 2 shall not duplicate payments under this paragraph for the following:
 - a. Contract prices for goods or services accepted under the contract;
 - b. Costs incurred in preparing and performing the terminated portion of the work plus a five percent markup on actual direct costs on such portion of the work. Such markup shall not include anticipatory profit or consequential damages, less amounts paid or to be paid for accepted goods or services; provided, that if it

appears that the contractor would have sustained a loss if the entire contract would have been completed, no markup shall be allowed or included and the amount of compensation shall be reduced to reflect the anticipated rate of loss;

- c. Subject to the prior approval of the chief procurement officer of the House of Representatives, the costs of settling and paying claims arising out of the termination of subcontracts or orders pursuant to section 5.10.2. Subcontractors shall be entitled to a markup of no more than ten percent on direct costs incurred to the date of termination. These costs must not include costs paid in accordance with subparagraph b; or
- d. The total sum to be paid the contractor under this subparagraph shall not exceed the total contract price reduced by the amount of payments otherwise made, the proceeds of any sales of goods and manufacturing materials under paragraph 2 of this section, and the contract price of work not terminated.

Cost claimed, agreed to, or established under paragraphs 2 and 3 of this section shall be in accordance with Chapter 3-123, HAR.

5.11 COMPLAINTS AND PROTESTS

Chapter 3-126, HAR, provides, among other things, that:

- (A) *Protestor initially should seek an informal resolution of the protestor's complaint with the procurement officer named in the solicitation. (Section 3-126-3(a))*
- (B) *Protestor may file a protest pursuant to section 103D-701, HRS, prior to receipt of offers on any phase of a solicitation including, but not limited to, specifications or disclosure of information marked confidential in the bid or offer. (Section 3-126-3(b))*
- (C) *To expedite handling of protests, the envelope should be labeled "Protest" and either served personally or sent by registered or certified mail, return receipt requested, to the chief procurement officer or as otherwise specified in the solicitation. (Section 3-126-3(c))*
- (D) *The written protest shall include at a minimum the following:*
 - (1) *The name and address of the protestor;*
 - (2) *Appropriate identification of the procurement;*
 - (3) *A statement of reasons for the protest; and*
 - (4) *Supporting exhibits, evidence, or documents to substantiate any claims unless not available within the filing time in which case the expected availability date shall be indicated. (Section 3-126-3(d))*

- (E) *A protest of a award shall be submitted in writing to the chief procurement officer or as otherwise specified in the solicitation, within five working days after the posting of the notice of award for solicitations pursuant to section 103D-302 or 103D-303, HRS; provided a protest following a debriefing pursuant to section 103D-303(h), HRS, shall be submitting in writing within five working days after the debriefing is completed. The provisions of subsections 3-126-3(c) and (d) to file a protest shall be complied with. Heads of purchasing agencies shall not proceed with the award upon receipt of a timely protest, and shall comply with section 3-126-5. (Section 3-126-4(a))*

5.12 DISPUTES

All controversies between the House of Representatives and the contractor which arise under, or are by virtue of, this contract and which are not resolved by mutual agreement, shall be decided by the chief procurement officer of the House of Representatives in writing, within 90 calendar days after a written request by the contractor for a final decision concerning the controversy; provided that if the said chief procurement officer does not issue a written decision, or within such longer period as may be agreed upon by the parties, then the contractor may proceed as if an adverse decision had been received.

The chief procurement officer of the House of Representatives shall immediately furnish a copy of the decision to the contractor, by certified mail, return receipt requested, or by any other method that provides evidence of receipt.

Any such decision shall be final and conclusive, unless fraudulent, or the contractor brings an action seeking judicial review of the decision in the circuit court of the State within six months from the date of receipt of the decision.

The contractor shall comply with any decision of the chief procurement officer of the House of Representatives and proceed diligently with performance of this contract pending final resolution by the circuit court of this State of any controversy arising under, or by virtue of, this contract, except where there has been a material breach of contract by the House of Representatives; provided that in any event the contractor shall proceed diligently with the performance of the contract where the chief procurement officer has made a written determination that continuation of work under the contract is essential to the public health and safety.

5.13 HAWAII LAW

Any dispute arising under or out of this contract is subject to the laws of the State of Hawaii, including but not limited to, Chapter 3-126, HAR.

6 PAYMENT

6.1 Method of Payment

The method of payment under the contract shall be as set forth in the Special Conditions. Further, payment to the contractor shall be made in accordance with the contract provision at the contracted price or prices. Invoices shall be payable upon certification by

authorized legislative personnel that the contractor has satisfactorily performed the work required therein.

6.2 Final Payment

In accordance with Section 103-53, HRS, final payment under the contract shall not be made until the contractor has filed with the House of Representatives a tax clearance from the State Director of Taxation that all delinquent taxes levied or accrued under state statutes have been paid.

6.3 Prompt Payment by Contractor to Subcontractors

Any money, other than retainage, paid to a contractor shall be dispersed to subcontractors within ten days after receipt of the money in accordance with the terms of the subcontract; provided that the subcontractor has met all the terms and conditions of the subcontract and there are no bona fide disputes.

Upon final payment to the contractor, full payment to the subcontractor(s), including retainage, shall be made within ten days after receipt of the money; provided that there are no bona fide disputes over the subcontractor's performance under the subcontract.

6.4 Interest

Interest on amounts ultimately determined to be due to a contractor or the House of Representatives shall be payable at the statutory rate applicable to judgment, against the House of Representatives under Chapter 662, HRS, from the date the claim arose through the date of decision or judgment, whichever is later.

7 NO WAIVER

No term or provision of the contract shall be waived and no breach excused and consented to unless such waiver or consent shall be in writing and signed by the party granting the waiver or consent. In the event either party grants a waiver or consent to a breach of contract provision, such waiver or consent shall not constitute a waiver of or consent to any other or further breach of the term or provision or any different breach.

Failure of the House of Representatives to insist, in any one or more instances, upon strict compliance of any of the covenants or agreements in the contract, shall not be construed as a waiver or relinquishment of such covenant or agreement in any other instance, but the same shall continue and remain in full force and effect.